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8 **BEFORE THE**  
9 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. VN-2010-1579

13 **DAVID EDWARD QUESADA**  
14 **3721 S Birch**  
15 **Santa Ana, California 92707**

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

16 **Vocational Nurse License No. VN 251890**

17 Respondent.

18 **FINDINGS OF FACT**

19 1. On November 13, 2012, Complainant Teresa Bello-Jones, J.D., M.S.N., R.N., in  
20 her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric  
21 Technicians, Department of Consumer Affairs, filed Accusation No. VN-2010-1579 against  
22 David Edward Quesada (Respondent) before the Board of Vocational Nursing and Psychiatric  
23 Technicians (Board). (Accusation attached as Exhibit A.)

24 2. On August 11, 2010, the Board issued Vocational Nurse License No. VN 251890  
(License) to Respondent. The License will expire on August 31, 2014, unless renewed.

25 3. On November 13, 2012, Respondent was served by Certified and First Class Mail  
26 copies of Accusation No. VN-2010-1579, Statement to Respondent, Notice of Defense, Request  
27 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and  
28 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code

1 (Code) section 136, is required to be reported and maintained with the Board. Respondent's  
2 address of record was and is 3721 South Birch, Santa Ana, California 92707.

3 4. Service of the Accusation was effective as a matter of law under the provisions of  
4 Government Code section 11505, subdivision (c) and Code section 124.

5 5. Government Code section 11506 states, in pertinent part:

6 (c) The respondent shall be entitled to a hearing on the merits if the  
7 respondent files a notice of defense, and the notice shall be deemed a specific  
8 denial of all parts of the accusation not expressly admitted. Failure to file a notice  
9 of defense shall constitute a waiver of respondent's right to a hearing, but the  
10 agency in its discretion may nevertheless grant a hearing.

11 6. Respondent failed to file a Notice of Defense within 15 days after service upon  
12 him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation  
13 No. VN-2010-1579.

14 7. California Government Code section 11520 states, in pertinent part:

15 (a) If the respondent either fails to file a notice of defense or to appear at  
16 the hearing, the agency may take action based upon the respondent's express  
17 admissions or upon other evidence and affidavits may be used as evidence  
18 without any notice to respondent.

19 8. Pursuant to its authority under Government Code section 11520, the Board finds  
20 Respondent is in default. The Board will take action without further hearing and, based on the  
21 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
22 taking official notice of all the investigatory reports, exhibits and statements contained therein on  
23 file at the Board's offices regarding the allegations contained in Accusation No. VN-2010-1579,  
24 finds that the charges and allegations in Accusation No. VN-2010-1579, are separately and  
25 severally, found to be true and correct by clear and convincing evidence.

26 9. Taking official notice of its own internal records, pursuant to Code section 125.3,  
27 it is hereby determined that the reasonable costs for Investigation and Enforcement is \$1,027.50  
28 as of December 3, 2012.

#### **DETERMINATION OF ISSUES**

1. Based on the foregoing findings of fact, Respondent David Edward Quesada has  
subjected his Vocational Nurse License No. VN 251890 to discipline.

1           2.       The agency has jurisdiction to adjudicate this case by default.

2           3.       The Board is authorized to revoke Respondent's License based upon the  
3 following violations alleged in the Accusation which are supported by the evidence contained in  
4 the Default Decision Evidence Packet in this case.:

5               a.       Respondent has subjected his vocational nurse license to disciplinary  
6 action under Code sections 490 and 2878, subdivision (f) in that on December 29, 2010, in a  
7 criminal proceeding entitled *The People of the State of California vs. David Edward Quesada*, in  
8 Orange County Superior Court, Central Justice Center, case number 10CM11837, he was  
9 convicted on his plea of guilty of violating Vehicle Code (VC) sections 23152, subdivision (a),  
10 driving under the influence (DUI) of alcohol, and subdivision (b), driving with a blood alcohol  
11 content (BAC) of .08% or more, and 14601.1, subdivision (a), driving on suspended license,  
12 misdemeanors that are substantially related to the qualifications, functions, and duties of a  
13 Licensed Vocational Nurse. Respondent admitted and the court found true the allegation that his  
14 BAC was .20% or more, a sentencing enhancement pursuant to VC section 23538, subdivision  
15 (b)(2). In fact, Respondent's BAC was .25%.

16               b.       Respondent has subjected his vocational nurse license to disciplinary  
17 action under Code section 2878.5, subdivision (b), in that on October 25, 2010, as described in  
18 paragraph 3a, above, he used alcoholic beverages to an extent or in a manner that was potentially  
19 dangerous and injurious to himself and to others when he operated a motor vehicle while  
20 impaired with a significantly high BAC.

21               c.       Respondent has subjected his vocational nurse license to disciplinary  
22 action under Code section 2878.5, subdivision (c), in that on December 29, 2010, as described in  
23 paragraph 3a, above, he was convicted of criminal offenses involving the consumption of  
24 alcohol.

25           4.       To determine the degree of discipline, if any, to be imposed on Respondent,  
26 pursuant to CCR, section 2522, Respondent was also convicted on March 29, 2010, in a criminal  
27 proceeding entitled *The People of the State of California v. David Edward Quesada*, in Orange  
28 County Superior Court, North Justice Center, case number 09NM07238, of violating Penal Code

1 (PC) section 415, subdivision (2), maliciously disturbing another person by loud and  
2 unreasonable noise, a misdemeanor substantially related to the qualifications, functions, and  
3 duties of a Licensed Vocational Nurse.

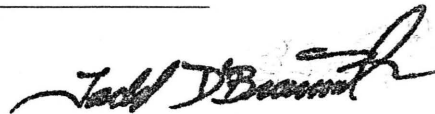
4 **ORDER**

5 IT IS SO ORDERED that Vocational Nurse License No. VN 251890, heretofore issued  
6 to Respondent David Edward Quesada, is revoked.

7 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
8 written motion requesting that the Decision be vacated and stating the grounds relied on within  
9 seven (7) days after service of the Decision on Respondent. The agency in its discretion may  
10 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

11 This Decision shall become effective on MAY 17 2013.

12 It is so ORDERED. APR 17 2013

13 

14 FOR THE BOARD OF VOCATIONAL NURSING  
15 AND PSYCHIATRIC TECHNICIANS  
16 DEPARTMENT OF CONSUMER AFFAIRS

17 70654021.DOC  
18 DOJ Matter ID:SD2012703739

19 Attachment:  
20 Exhibit A: Accusation

# Exhibit A

Accusation

**FILED**

NOV 13 2012

Board of Vocational Nursing  
and Psychiatric Technicians

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9 **BEFORE THE**  
**BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. VN-2010-1579

13 **DAVID EDWARD QUESADA**  
3721 S Birch  
14 Santa Ana, California 92707

**A C C U S A T I O N**

15 Vocational Nurse License No. VN 251890

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation  
21 solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and  
22 Psychiatric Technicians, Department of Consumer Affairs.

23 2. On or about August 11, 2010, the Board of Vocational Nursing and Psychiatric  
24 Technicians issued Vocational Nurse License Number VN 251890 to David Edward Quesada  
25 (Respondent). The Vocational Nurse License will expire on October 22, 2012, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board of Vocational Nursing and  
28 Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the

1 following laws. All section references are to the Business and Professions Code (Code) unless  
2 otherwise indicated.

3 4. Section 118, subdivision (b) of the Code provides, in pertinent part, that the  
4 expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary  
5 action during the period within which the license may be renewed, restored, reissued or  
6 reinstated. Under section 2892.1 of the Code, the Board may renew an expired license at any  
7 time within four years after the expiration.

8 5. Section 2875 of the Code provides, in pertinent part, that the Board may  
9 discipline the holder of a vocational nurse license for any reason provided in Article 3  
10 (commencing with section 2875) of the Vocational Nursing Practice Act.

#### 11 STATUTORY PROVISIONS

12 6. Section 482 of the Code states:

13 Each board under the provisions of this code shall develop criteria to  
14 evaluate the rehabilitation of a person when:

15 (a) Considering the denial of a license by the board under Section 480; or

16 (b) Considering suspension or revocation of a license under Section 490.

17 Each board shall take into account all competent evidence of rehabilitation  
18 furnished by the applicant or licensee.

19 7. Section 490 of the Code provides, in pertinent part, that the Board may suspend or  
20 revoke a license when it finds that the licensee has been convicted of a crime substantially  
21 related to the qualifications, functions or duties of a licensed vocational nurse.

22 8. Section 493 of the Code states:

23 Notwithstanding any other provision of law, in a proceeding conducted by  
24 a board within the department pursuant to law to deny an application for a license  
25 or to suspend or revoke a license or otherwise take disciplinary action against a  
26 person who holds a license, upon the ground that the applicant or the licensee has  
27 been convicted of a crime substantially related to the qualifications, functions, and  
28 duties of the licensee in question, the record of conviction of the crime shall be  
conclusive evidence of the fact that the conviction occurred, but only of that fact,  
and the board may inquire into the circumstances surrounding the commission of  
the crime in order to fix the degree of discipline or to determine if the conviction  
is substantially related to the qualifications, functions, and duties of the licensee in  
question.

As used in this section, "license" includes "certificate," "permit,"  
"authority," and "registration."

1           9.     Section 2878 of the Code states:

2                 The Board may suspend or revoke a license issued under this chapter [the  
3     Vocational Nursing Practice Act (Bus. & Prof. Code, § 2840, et seq.)) for any of  
4     the following:

5                 (a)     Unprofessional conduct, which includes, but is not limited to, the  
6     following:

7                 ....

8                 (f)     Conviction of a crime substantially related to the qualifications,  
9     functions, and duties of a licensed vocational nurse, in which event the record of  
10    the conviction shall be conclusive evidence of the conviction.

11                ....

12           10.    Section 2878.5 of the Code states:

13                 In addition to other acts constituting unprofessional conduct within the  
14     meaning of this chapter, it is unprofessional conduct for a person licensed under  
15     this chapter to do any of the following:

16                ....

17                 (b) Use any controlled substance as defined in Division 10 of the Health  
18     and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic  
19     beverages, to an extent or in a manner dangerous or injurious to himself or  
20     herself, any other person, or the public, or to the extent that the use impairs his or  
21     her ability to conduct with safety to the public the practice authorized by his or  
22     her license.

23                 (c) Be convicted of a criminal offense involving possession of any  
24     narcotic or dangerous drug, or the prescription, consumption, or self-  
25     administration of any of the substances described in subdivisions (a) and (b) of  
26     this section, in which event the record of the conviction is conclusive evidence  
27     thereof.

28                ....

## REGULATORY PROVISIONS

1           11.    California Code of Regulations, title 16, (CCR) section 2521, states:

2                 For the purposes of denial, suspension, or revocation of a license pursuant  
3     to Division 1.5 (commencing with Section 475) of the Business and Professions  
4     Code, a crime or act shall be considered to be substantially related to the  
5     qualifications, functions or duties of a licensed vocational nurse if to a substantial  
6     degree it evidences present or potential unfitness of a licensed vocational nurse to  
7     perform the functions authorized by his license in a manner consistent with the  
8     public health, safety, or welfare. Such crimes or acts shall include but not be  
9     limited to those involving the following:

10                (a) Procuring a license by fraud, misrepresentation, or mistake.

11     ///



1 (b) A conviction of practicing medicine without a license in violation of  
2 Chapter 5 of Division 2 of the Business and Professions Code.

3 (c) Violating or attempting to violate, directly or indirectly, or assisting in  
4 or abetting the violation of, or conspiring to violate any provision or term of  
5 Chapter 6.5, Division 2 of the Business and Professions Code.

6 (d) Aiding or assisting, or agreeing to aid or assist any person or persons,  
7 whether a licensed physician or not, in the performance of or arranging for a  
8 violation of any of the provisions of Article 13, Chapter 5, Division 2 of the  
9 Business and Professions Code.

10 (e) Conviction of a crime involving fiscal dishonesty.

11 (f) Any crime or act involving the sale, gift, administration, or furnishing  
12 of "narcotics or dangerous drugs or dangerous devices" as defined in Section  
13 4022 of the Business and Professions Code.

14 12. CCR section 2522 states:

15 When considering a) the denial of a license under Section 480 of the  
16 Business and Professions Code, b) the suspension or revocation of a license on the  
17 ground that a licensee has been convicted of a crime, or c) a petition for  
18 reinstatement of a license under Section 2787.7 of the Business and Professions  
19 Code, the Board in evaluating the rehabilitation of an individual and his or her  
20 present eligibility for a license, will consider the following criteria:

21 (1) Nature and severity of the act(s), offense(s), or crime(s) under  
22 consideration.

23 (2) Actual or potential harm to the public.

24 (3) Actual or potential harm to any patient.

25 (4) Overall disciplinary record.

26 (5) Overall criminal actions taken by any federal, state or local agency or  
27 court.

28 (6) Prior warnings on record or prior remediation.

(7) Number and/or variety of current violations.

(8) Mitigation evidence.

(9) In case of a criminal conviction, compliance with terms of sentence  
and/or court-ordered probation.

(10) Time passed since the act(s) or offense(s) occurred.

(11) If applicable, evidence of proceedings to dismiss a conviction  
pursuant to Penal Code section 1203.4.

(12) Cooperation with the Board and other law enforcement or regulatory  
agencies.

(13) Other rehabilitation evidence.

## 26 COST RECOVERY

27 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request  
28 the administrative law judge to direct a licensee found to have committed a violation or

1 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
2 and enforcement of the case.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(December 29, 2010 Criminal Conviction For DUI, Driving With BAC .08% Or More, And**  
5 **Driving On Suspended License On October 25, 2010)**

6 14. Respondent has subjected his vocational nurse license to disciplinary action under  
7 Code sections 490 and 2878, subdivision (f) in that Respondent was convicted of crimes that are  
8 substantially related to the qualifications, functions, and duties of a Licensed Vocational Nurse.  
9 The circumstances are as follows:

10 a. On or about December 29, 2010, in a criminal proceeding entitled *The*  
11 *People of the State of California vs. David Edward Quesada*, in Orange County Superior Court,  
12 Central Justice Center, case number 10CM11837, Respondent was convicted on his plea of  
13 guilty of violating Vehicle Code (VC) sections 23152, subdivision (a), driving under the  
14 influence (DUI) of alcohol, and subdivision (b), driving with a blood alcohol content (BAC) of  
15 .08% or more, and 14601.1, subdivision (a), driving on suspended license, misdemeanors.  
16 Respondent admitted and the court found true the allegation that Respondent's BAC was .20% or  
17 more, a sentencing enhancement pursuant to VC section 23538, subdivision (b)(2). In fact,  
18 Respondent's BAC was .25%. An additional charge for violation of VC section 12500,  
19 subdivision (a), driving without a valid driver's license, a misdemeanor, was dismissed as a  
20 result of a plea bargain.

21 b. As a result of his convictions, on or about December 29, 2010, informal  
22 probation was granted for three years until December 28, 2013, and Respondent was sentenced  
23 to serve 20 days in the Orange County Jail, with an option to render 20 days of community  
24 service with the California Department of Transportation in lieu of jail. Respondent was also  
25 ordered to pay fines, fees, and restitution, to attend and complete a complete a 9-month Level 2  
26 First Offender Alcohol Program and a Mother's Against Drunk Driving (MADD) Victim's  
27 Impact Panel, and comply with the terms of standard DUI probation. On or about June 12, 2012,

28 ///

1 Respondent was found to be in violation of probation. As a result, Respondent was sentenced to  
2 30 days in the Orange County Jail and probation was reinstated to end on April 4, 2015.

3 c. The facts that led to the convictions are that on or about October 25, 2010,  
4 in the City of Santa Ana, California, Respondent was involved in a two-vehicle, non-injury  
5 traffic collision. Respondent was driving northbound along South Birch Street towards Murphy  
6 Avenue while an officer from the Santa Ana Police Department (SAPD) was driving southbound  
7 in the opposite lane towards Murphy Avenue. The officer had just entered the intersection and  
8 was preparing to complete a u-turn when he observed Respondent's car had its headlights off and  
9 did not stop at the stop sign. The officer activated his overhead emergency lights and shined his  
10 driver's side spotlight towards Respondent to get him to stop. However, Respondent entered the  
11 intersection without stopping for the stop sign and proceeded to collide into the officer's marked  
12 black and white police vehicle, striking the patrol car in the front fender. Upon contact,  
13 Respondent displayed objective symptoms of being under the influence of alcohol. Respondent  
14 had red, bloodshot, and watery eyes, slurred speech, unsteady gait, and smelled of alcohol.  
15 Respondent refused both the Nystagmus test and sobriety tests, whereupon he was arrested. At  
16 the SAPD Jail, Respondent provided a blood sample, which upon testing was found to have .25  
17 percent BAC.

## 18 SECOND CAUSE FOR DISCIPLINE

### 19 (Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)

20 15. Respondent has subjected his vocational nurse license to disciplinary action under  
21 Code section 2878.5, subdivision (b), in that on or about October 25, 2010, as described in  
22 paragraph 14, above, he used alcoholic beverages to an extent or in a manner that was potentially  
23 dangerous and injurious to himself and to others when he operated a motor vehicle while  
24 impaired with a significantly high BAC.

## 25 THIRD CAUSE FOR DISCIPLINE

### 26 (Unprofessional Conduct - Conviction of Alcohol Related Criminal Offenses)

27 16. Respondent has subjected his vocational nurse license to disciplinary action under  
28 Code section 2878.5, subdivision (c), in that on or about December 29, 2010, as described in

1 paragraph 14, above, he was convicted of criminal offenses involving the consumption of  
2 alcohol.

3 **DISCIPLINARY CONSIDERATIONS**

4 17. To determine the degree of discipline, if any, to be imposed on Respondent,  
5 pursuant to CCR, section 2522, Complainant alleges:

6 a. On or about March 29, 2010, in a criminal proceeding entitled *People of*  
7 *the State of California v. David Edward Quesada*, in Orange County Superior Court, North  
8 Justice Center, case number 09NM07238, Respondent was convicted on his plea of guilty of  
9 violating Penal Code (PC) section 415, subdivision (2), maliciously disturbing another person by  
10 loud and unreasonable noise, a misdemeanor. Additional charges for violation of PC section  
11 243, subdivision (e)(1), unlawfully using force and violence against a person with whom  
12 defendant currently has a dating relationship, and PC section 415, subdivision (1), unlawfully  
13 fighting in a public place, both misdemeanors, were dismissed as a result of a plea bargain.

14 b. As a result of the conviction, on or about March 29, 2010, Respondent was  
15 ordered to attend and complete a two to ten-week Anger Management Program (Domestic  
16 Violence Program) and pay fines, fees, and restitution. On or about May 3, 2010, Respondent  
17 failed to appear with proof of Anger Management Enrollment. As a result of the violation, on or  
18 about May 24, 2010, Respondent was ordered to complete community service in lieu of fines. On  
19 or about November 19, 2010, Respondent's sentence was modified to 20 days in Orange County  
20 Jail.

21 c. The facts that led to the conviction are that on or about December 6, 2008,  
22 Respondent attended a small gathering at his girlfriend's apartment. As the evening progressed,  
23 Respondent began making inappropriate comments. Respondent's girlfriend asked him to leave.  
24 After realizing that Respondent had too much to drink, Respondent's girlfriend took his keys  
25 away from him. Respondent pushed his girlfriend onto her bed, straddled her, and then placed his  
26 hands around her neck. Respondent began to squeeze, causing her to have difficulty breathing.  
27 When she managed to wiggle out from under him, Respondent kicked her and grabbed her by her  
28 wrists and twisted them both behind her back. Friends intervened and Respondent left. As a result

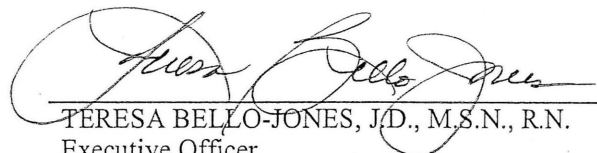
1 of Respondent's assault, his girlfriend developed bruising and swelling to her left hand, bruising  
2 to her left shin, and redness and swelling to her neck.

3 **PRAYER**

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
5 alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric  
6 Technicians issue a decision:

- 7 1. Revoking or suspending Vocational Nurse License Number VN 251890, issued to  
8 David Edward Quesada;
- 9 2. Ordering David Edward Quesada to pay the Board of Vocational Nursing and  
10 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,  
11 pursuant to Business and Professions Code section 125.3;
- 12 3. Taking such other and further action as deemed necessary and proper.

13  
14  
15  
16 DATED: **NOV 13 2012**



TERESA BELLO-JONES, J.D., M.S.N., R.N.  
Executive Officer  
Board of Vocational Nursing and Psychiatric Technicians  
Department of Consumer Affairs  
State of California  
Complainant

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